

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY LAWSON : CIVIL ACTION  
 :  
 v. :  
 :  
 CONSOLIDATED RAIL CORPORATION : NO. 97-7206

MEMORANDUM ORDER

Defendant implemented a Voluntary Separation Program ("VSP") in 1996 as part of a plan to reduce its workforce. Under the terms of the VSP, employees who elected to participate and were accepted would receive certain benefits in return for their voluntary termination of employment.

Plaintiff filed this action asserting that defendant breached the terms of their agreement relating to the VSP. Plaintiff alleges that defendant breached its promise to allow him to rescind his election to participate in the VSP. He seeks reinstatement and a recovery of the income and benefits he would have received had he continued his employment with defendant. Presently before the court is defendant's Motion to Stay Proceedings Pending Exhaustion of Administrative Remedies.

Before a participant in an ERISA plan may seek judicial enforcement of the terms of the plan, he must first exhaust his available administrative remedies. See Berger v. Edgewater Steel Co., 911 F.2d 911, 916 (3d Cir. 1990). The VSP is an amendment to defendant's Supplemental Pension Plan.

Defendant asserts that the Supplemental Pension Plan set in place a mechanism for review of claims involving the plan.

The only mechanism for administrative review of claims discernible from the written provisions of the plan is one for the review of benefits claims. See Supplemental Pension Plan of Consolidated Rail Corp. at § 7.6 ("Any Participant or Beneficiary in the Plan ("Claimant") may file a written claim for a Plan benefit with the Pension Administration Committee.") (emphasis added). Plaintiff is not seeking benefits but rather enforcement of his claimed rights under the terms of the plan. There are no discernible administrative remedies for him to exhaust. See Berger, 911 F.2d at 916 n.4 (plaintiffs need not exhaust administrative remedies when no such remedies are in place for the particular claims).

**ACCORDINGLY**, this day of September, 1998, upon consideration of defendant's Motion to Stay Proceedings Pending Exhaustion of Administrative Remedies (Doc. #7) and plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**